

### Syringe cradle

Claims 1-3, 6, 11 and 14-19 recite a housing, a fluid container support and a syringe cradle. The Examiner rejected these claims, citing Gullino as disclosing a housing and a fluid container support and Chung as disclosing a syringe cradle. The Examiner asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the Chung syringe cradle to the Gullino device "in order to have the syringe means in a stable condition and near the animal to be treated."

In a proper obviousness determination, the prior art must give a reason or motivation for making the claimed invention. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). In re Lee emphasizes that evidence of motivation to combine references is not a trivial requirement, but is rather the best defense against a hindsight-based analysis. 61 USPQ2d at 1433. In re Lee further emphasizes the importance of creation of an evidentiary record that supports a conclusion of obviousness. Id. at 1433-34. The findings must be based upon evidence in the record, not upon the subjective belief of the Examiner. See id. at 1434. If there are deficiencies in the evidentiary record, the deficiencies cannot be cured by general conclusions such as "general knowledge" or "common sense." Id.

The Examiner made no record at all pertaining to a motivation to combine the Gullino and Chung references. Instead, the Examiner merely asserted that all of the elements could be found in two references and therefore combination of the references rendered Applicants' claimed invention obvious. This is clearly a legally improper analysis under In re Lee.

There is no motivation to combine the references. The fluid container support in Gullino is a feeding device, not a device for animal treatment. Clearly, one skilled in the art of animal treatment/confinement apparatus would not be motivated to consider using a feeding device for administration of treatment. Furthermore, the Chung apparatus is not used for treatment of any living thing, animal or human. Rather, the Chung device includes a clamping structure for extruding gels from gel tubes in a controlled manner in a laboratory setting. The clamping structure holds a syringe that is operated with a pressure plate driven by a turning handle coupled to a threaded shaft. Turning the handle will rotate the threaded shaft, causing the pressure plate to drive water into a gel tube to extrude the gel from the gel tube. Clearly, there would have been no reason for a person of ordinary skill, designing a confinement/treatment apparatus for an

animal, to look to Chung for a solution pertaining to administration of treatment, nor would one skilled in the art be motivated to combine the Gullino and Chung devices.

The Examiner's purported motivations to combine the references are not found within the references. Rather, the purported motivations are based upon advantages disclosed by the Applicant's own disclosure and upon the Examiner's subjective belief. These are not proper motivations to combine. In re Lee, 61 USPQ2d at 1433-34.

#### Top Panels and Related Features

Claims 2, 3, 7-10 and 14-15 recite a first top panel hingedly coupled to the housing. Claims 2, 3, 7-10 and 15 further recite a second top panel hingedly coupled to the housing, the first and second top panels being selectively positionable to cover at least a portion of the top opening of the housing. The Examiner rejected claims 2, 3, 7-10 and 14-15 as unpatentable over Gullino in view of Thrun.

Thrun was not previously cited by the Examiner, and represents a new ground for rejection. Citation of Thrun was not necessitated by any amendment from the Applicant. On the contrary, the Applicant has not amended claims 2, 3, 7-10 and 14-15. Accordingly, it was improper for the Examiner to make the second office action final. MPEP 706.07(a). A request for an opportunity to respond to Thrun was made during an interview with the Examiner on October 17, 2002.

#### Conclusion

Applicant respectfully request withdrawal final office action mailed July 26, 2002. In the alternative, Applicant requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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28 October 2002  
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